

Legal and Judicial Ethics, its Relevance Revisited

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On Lawyers

*“You delight in laying down laws,
yet you delight more in breaking them.
Like children playing by the ocean who
build sand-towers with constancy and then
destroy them with laughter.
But while you build sand-towers the
ocean brings more sand to the shore,
and when you destroy them, the ocean
laughs with you.*

*Verily the oceans laughs always with the innocent.”
(Excerpts from the Prophet by Kahlil Gibran)*

Prefatory

Professional competency is not only the mark of a profession because skilled workers possessed also the skills peculiar to those who practice the same calling. What distinguishes a profession from the rest of human endeavor is the supposed observance of the members of a particular profession of the tenets of professional ethics peculiar to the said profession. In the metaphorical sense, the observance of and adherence to the “Code of Chivalry” by the members of a particular profession distinguishes a “knight” from those who have not been “knighted” so to speak. The code of ethics of a given profession distinguishes the profession from the ordinary money making activities peculiar to merchants. Ideally, in the practice of a given profession, more so in the legal profession, the earnings derived from the exercise or practice of the profession is only secondary, a mere by product in the

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practice of law because the primary consideration in the practice of the law profession is the rendition of service to the public, service to humanity, i.e., to help those who seek justice so that every one is given his due.

The legal profession known as the noble and ancient profession has ethical tenets that require its votaries, the so called suitors of the law, to adhere and observe continuing fidelity to the ethical tenets of the profession. In fact in the Utopian sense, the success of a lawyer is and should always be measured by the way the votary of the law adheres to the ethical standards of the profession. If the law profession has to remain an honorable calling it is imperative that “those enrolled in its rank should not master its tenets and principles but should also, by their lives, accord continuing fidelity to them. (Agpalo, Legal and Judicial Ethics, 2002 Ed.,p.1, citing Docena vs. Limon, 98 SCAD 232; 295 SCRA 262)”

The precepts of legal ethics are not barren provisions, they are not plain black letters of the law construed from the standpoint of dry principle of verba legis, but to paraphrase the late Oliver Wendell Holmes the ethical tenets are not supposed to be interpreted by its literal meaning alone because the ethical principles in the ethics of the profession are living social institutions. They should not be construed according to the letter that killeth but by the spirit that giveth life. Were we to construe the ethics according to the letter that killeth then we may say that the votaries of the law may be said to be the “children playing by the ocean who build sand- tower with constancy and then destroy them with laughter”. That is not the essence of the ethics of the profession. The ethics does not cultivate the mind, the ethics seeks to cultivate the heart of the members of the profession. Copious ethical principles no matter how detailed and comprehensive in scope are nothing but plain intellectual ideas if not inculcated in the hearts of the votaries of the law. It does not mean cutting edge intellect is not important in the practice of the profession of the law, it is important. After all a lawyer is an intellectual warrior in the arena of wits, i.e., the courtroom. But adherence to the ethical principle requires more than intellectual sharpness of the votary of the law. The study of legal ethics requires both the heart and the mind. Because without the heart it would be next to impossible to imbibe the ethics and without the mind it would mean blind obedience to the ethics of the profession. There should be no blind obedience to the ethical tenets of the profession because legal ethics is the living spirit of the profession we all love and we

voluntarily assumed when we were admitted to the bar; when we recited the sacred oath, i.e., the lawyer's oath.

I. Introduction

I.A. Background of the Study

This opus discusses the nature of ethics in general, the sources of legal ethics and the administrative sanctions imposed in case of ethical deviation by the votaries of the law particularly the foot soldiers of the judiciary, the judges. The paper discusses also some preliminaries on the nature of the profession, the requisites for the admission to the bar. This opus seeks to emphasize that if law profession has to remain a noble one, the ethical tenets should be inculcated in the minds and hearts of the votaries of the law.

To develop deeper interest and appreciation in legal ethics, the study made a brief overview of the foundation ethics in general, and to rekindle the "magic" we felt in our hearts when we were still aspiring to join the so called legal fraternity, the ethical ideals of the profession were likewise discussed in this paper so as to encourage once more the votaries of the profession to revisit with open minds and softened hearts the subject of legal ethics.

I Overview of Ethics

(I.A) Ethics in General

Ethics is defined as the practical science of morality of human conduct. It is a science because it consists of relatively complete and systematically arranged body of interrelated data together with causes or reasons by which these data are known to be true. Ethics is also defined as "the study of the right and good, i.e., right conduct in the affairs of human life, and the pursuit of good life. (Sahakian and Sahakian, *Realms of Philosophy*, p. 75, Philippine Copyright 1970)"

Ethics is a practical science as distinguish from speculative science. It is a practical science since it provides guidelines for thought or a blue print for a course of action. Thus: "If the data of a science directly imply rules or direction for thought or action, the science is practical. If

the data of a science enrich the mind without directly implying rules or directions, the science is speculative x x x. A speculative science enlarges our knowledge and enhances our cultural equipment; a practical science gives us knowledge with definite guidance. (Glenn, Ethics, A Class Manual in Moral Philosophy, p ix-x of Introduction, Copyright 1968)”

(I.B) Professional Ethics, Purpose of; Legal and Judicial Ethics

The law is profession, a noble calling. If the law has to remain as a noble and honorable profession then it goes without saying that the profession should have ethical standards that should be observed by the members thereof in the pursuit or in the exercise of the calling. “The ethics of certain profession is the code by which it regulates actions and sets standards for its members. The professional code attempts to assure higher standards of competence in a given field, strengthen the relationships among its members, and promote the welfare of the whole community. (World Book Encyclopedia, Vol. 6, p. 337)” **The Code of Professional Responsibility, The Canons of Professional Ethics, Canons of Judicial Ethics, Code of Judicial Conduct and The Rules of Mandatory Continuing Legal Education (MCLE), Rules 137, 138, 138-A,139-A, 139-B, 140 of the Rules of Court and the attorney’s oath of office (Form 28,Judicial Standard Form, under Rule 144 of the Rules of Court)**, collectively they are known as and considered as integral parts and parcels of the subject known as “Legal and Judicial Ethics.”

(I.C) Legal and Judicial Ethics as Practical Science

Legal and Judicial Ethics collectively is a practical science because the precepts of the subject are actually rules of conduct supposed to be observed by the members of the legal profession in the exercise or practice of the profession inclusive of the members of the profession who are “sitting on bench” as judges or justices, hence the subject Legal and Judicial Ethics.

(I.D) Sources of Legal and Judicial Ethics

The precepts of the following are the sources of legal ethics, viz., The Canons of Professional Ethics (N.B. These are actually canons of the American Bar Association [ABA] adopted by the Philippine Bar Association [PBA] as its own in 1917 and in 1946. The PBA is a

voluntary organization of Filipino Lawyers as distinguish from the Integrated Bar of the Philippines [IBP] where membership thereto is mandatory for all lawyers who are admitted to the bar by the Philippine Supreme Court; see in *Re. Edillon*, 84 SCRA 554 [1978]), Canons of Judicial Ethics (Adm. Order 162, August 1, 1946 of the Department of Justice), Code of Judicial Conduct (Effective Oct. 20, 1989), Rules on Mandatory Continuing Legal Education [MCLE], adopted on August 22, 2000), Code of Professional Responsibility (adopted by the Supreme Court on June 21,1988), Rules 137,138,138-A,139-A,139-B,140 of the Rules of Court and the lawyer's oath.

II Legal Ethics and the Profession of Law

(II.A) Semper Fidelis to Legal Ethics

Time and again it has been said that law is a noble profession, [T]he law is not a trade nor a craft but a profession. Its basic ideal is to render public service and secure justice for those who seek its aid. (Agpalo, *Legal and Judicial Ethics*, 7th ed., p.1, citing *Director of Religious Affairs vs. Bayot*, 74 Phil. 748 (1944), et. seq., *Mayer vs. State Bar*, 2 Cal 2d 71). Lawyers who are passionate with the law or lawyers who have deep feeling for the law [h]as given to the law that sort of devotion that the knight of legend gave to his lady; he has served it [the law] in the spirit that a devout priest gives to his religion xxx (Mark, *The Justice Holmes Reader*, p. 14).

Mr. Justice Oliver Wendell Holmes was so passionate with the law that he considered the law as a mistress, where he had once said that: "If we are to speak the law as our mistress we who are here know that she is a mistress only to be wooed with sustained and lonely passion only to be won by straining all the faculties by which man is likest to a god x x x (Ibid., p.14)".

The law as a profession is really a dignified, honorable and a noble calling, this is perhaps the reason why sometimes lawyers are referred to as priests in the temple of justice. In order to maintain the dignity and the nobility of the law as a profession its votaries are required to accord continuing fidelity (*semper fidelis*) to the tenets of the ethics of the profession. "*Semper fidelis*" (Always faithful) the motto of the United States Marines equally applies to the members of the legal profession, that

is ALWAYS FAITHFUL TO THE OATH AND ETHICS OF THE PROFESSION OF LAW.

II.2 Importance of the Law Profession

The law profession is an indispensable component of the system that dispenses justice. More so, it is a truism in our system of government that “Ours is a government of laws and not of men”, this principle is one of the manifestations of “republicanism” under which principle the Republic of the Philippines operates, Sec.1 of Art. II of the 1987 Constitution provides inter alia, thus: “The Philippines is a democratic and republican state. x x x.”

The importance of the legal profession in our system of government is aptly described in the Preamble to the Canons of Professional Ethics which we quote inter alia, thus: “In the Philippines, where the stability of courts and of all departments of government rests upon the approval of the people. x x x. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession [legal profession] are such as to merit the approval of all just men. (Preamble to the Code of Professional Ethics, adopted by the PBA from the Canons of the ABA)”

II.3 Features of the Legal Profession, Preliminaries

A member of the Philippine Bar is also known as “lawyer”, attorney at law”, “attorney”, “abogado”, “counselor at law”, “counsel”, “manananggol”, sometimes the lawyer is referred to as “mambabatas”. The prefixes “Atty.”, “Abgd.”, “Mggl.” are used by those who are admitted to the practice of law or licensed to practice law by no less than the highest court of the land, i.e., “The Supreme Court.”

Admitted to the Bar vis a vis Called to the Bar

In the Philippines when an individual is licensed to practice law that licensed individual is being referred to as one who is “admitted to the bar”. In the English Legal System an individual who is licensed to practice law is being referred to as one who is “called to the bar”. Worth mentioning also is that in the Philippines once an individual is admitted to

the bar that individual has the privilege to appear in courts of the Philippines as an attorney and counsellor at law, from the highest court of the land down to the lowest court, including administrative bodies exercising quasi judicial function. In the English Legal System which followed the principle of the so called “split profession” as distinguish from “fused Profession”, lawyers are classified basically into 2 categories, viz., “solicitor” and “barrister”. The solicitor can not appear before the superior court, e.g., the House of Lords (The House of Lords is the Supreme Court in England), the solicitor is an assistant to the barrister. The barrister on the other hand is a superior class of lawyers via a vis the solicitor. Only barristers can appear before the House of Lords and other superior courts in England.

Traditionally, a barrister was not trained in the university school of law, for legal training a barrister is said to “read the law” in one the Inns of the Court, viz., Gray’s Inn, Lincoln’s Inn, Inner Temple and Middle Temple.

II.4 Practice of Law and Public Interest

The practice of law is not a right but a mere privilege. It is a privilege impressed with public interest. “The reason for this is that is that an attorney, who alone enjoys such privilege, owes duties not only to his client but also to the court, to his brethren in the profession and to the public, and takes part in one of the most important functions of the state, i.e., the administration of justice. x x x The interest of the public requires that the function be faithfully discharged and rendered only by those who are qualified, fit and honest and who possess good moral character. Only by proper regulation of the practice of law will the interest of the public be adequately safeguarded. The practice of law is so intimately affected with public interest that it is both a right and a duty of the state to control and regulate it in order to promote public welfare. The Constitution vests this power of control and regulation in the Supreme Court.

Independently or even in the absence of such constitutional provision, the right to define and regulate the practice of law naturally and logically belongs to the judiciary represented by the highest tribunal since the practice of law is inseparably connected with the exercise of its judicial power in the administration of justice. (Agpalo, *op. cit.*, p.4-5, citing in *Re Integration of the Philippine Bar*, 49 SCRA 22, *et. seq.*)”

III Legal Ethics and the Selection of Judges

III.1 Upholding the Integrity of the Judiciary and the Power to Discipline the Members Thereof

Proem

It has been said that a judge is the visible representation of the law or to put it differently, the judge is the personification of justice and as such the judge must be “the embodiment of competence, integrity and independence. (Agpalo, *op. cit.*, p. 544, citing *Office of the Court Administrator vs. Gines*, 224 SCRA 261 [1993])”

Because of the sensitive nature of the office of the judge Canons 1 and 2 of the Code of Judicial Conduct stipulate in no uncertain terms that “A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY and x x x SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.” Like Caesar’s wife the judge should not only be beyond reproach but also has the APPEARANCE that he is irreproachable both in public as well as in public life.

III.2 Administrative Supervision of all Courts and the Power to Discipline Judges

Under the 1987 Constitution the Supreme Court of the Philippines has the administrative supervision over all courts and personnel thereof (see Art. VIII, Sec. 6, 1987 Constitution). The word personnel stipulated in the Constitution necessarily includes the judges manning the different courts.

The Supreme Court en banc has the power to discipline judges of the lower courts, or order their dismissal by a vote of majority of the members of the Supreme Court who actually took part in the deliberations on the issues in the case and voted thereon.

Term of Office of Judges

The members of the Supreme Court including judges of the lower court shall hold office during good behavior until they reach the

compulsory retirement age of 70 or even prior thereto the judge shall cease to hold office when he becomes incapacitated to discharge the duties of the office of the judge (see Art. VIII, Sec. 11, 1987 Constitution). The fact that there is a fixed term of office as discussed above it does not follow that a judge can not be removed from office prior to the occurrence of the compulsory retirement age.

The Supreme Court promulgated Rule 140 of the Rules of Court to provide for the mechanism, procedures and grounds for the removal of or disciplining judges. The said rule, however, does not apply to the members of the Supreme Court because the members of the Supreme Court are removable from office, like the President, The Vice President, the Members of the Constitutional Commission and the Ombudsman, via and thru impeachment proceedings. The grounds for impeachment are culpable violation of the Constitution, treason, bribery, other high crimes and betrayal of public trust (see Art. XI, Sec. 2, 1987 Constitution).

III.3 Grounds for the Removal/ Disciplining of Judges, Procedures

The grounds for the removal or disciplining judges are spelled out in Rule 140 of the Rules of Court and those stipulated in the Canons of Judicial Ethics and Code of Judicial Conduct. The procedures for initiating administrative case(s) against the erring members of the bench below the Supreme Court are contained in Rule 140 of the Rules of Court. Quoted hereunder is Rule 140 of the Rules of Court, thus:

“RULE 140

DISCIPLINE OF JUDGES OF REGULAR AND SPECIAL COURTS AND JUSTICES OF THE COURT OF APPEALS AND THE SANDIGANBAYAN

SECTION 1. *How instituted.* – Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions

constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

SEC. 2. *Action on the complaint.* – If the complaint is sufficient in form and substance, a copy thereof shall be served upon the respondent, and he shall be required to comment within ten (10) days from the date of service. Otherwise, the same shall be dismissed.

SEC. 3. *By whom complaint investigated.* – Upon the filing of the respondent's comment, or upon the expiration of the time for filing the same and unless other pleadings or documents are required, the Court shall refer the matter to the Office of the Court Administrator for evaluation, report and recommendation or assign the case for investigation, report, and recommendation to a retired member of the Supreme Court, if the respondent is a Justice of the Court of Appeals and the Sandiganbayan, or to a Justice of the Court of Appeals, if the respondent is a judge of a Regular Trial Court or of a special court of equivalent rank, or to a judge of the Regional Trial Court if the respondent is a Judge or an inferior court.

SEC. 4. *Hearing.* – The investigating Justice or Judge shall set a day for the hearing and send notice thereof to both parties. At such hearing, the parties may present oral and documentary evidence. If, after due notice, the respondent fails to appear, the investigation shall proceed *ex parte*.

The Investigating Justice or Judge shall terminate the investigation within ninety (90) days from the date of its commencement or within such extension as the Supreme Court may grant.

SEC. 5. *Report.* – Within thirty (30) days from the termination of the investigation, the investigating Justice or Judge shall submit to the Supreme Court a report containing findings of fact and recommendation. The report shall be accompanied by the record containing the evidence and the pleadings filed by the parties. The report shall be confidential and shall be for exclusive use of the Court.

SEC. 6. *Action.* – The Court shall take such action on the report as the facts and the law may warrant.

SEC. 7. *Classification of charges.* – Administrative charges are classified as serious, less serious, or light.

SEC. 8. *Serious charges.* – Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Grant and Corrupt Practices Law (R.A. No. 3019).
3. Gross misconduct constituting violations of the Code of Judicial Conduct;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits.

SEC. 9. *Less serious charges.* – Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequent and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;

4. Violation of Supreme Court rules, directive, and circulars;
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple misconduct.

SEC. 10. *Light charges.* – Light charges include:

1. Vulgar and unbecoming conduct;
2. Gambling in public;
3. Fraternizing with lawyers and litigants with pending case/cases in his court; and
4. Undue delay in the submission of monthly reports.

SEC. 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as this Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided, however,* That the forfeiture of benefits shall in no case include accrued leave credits.
2. Suspension from office without salary and other benefits for more than three (3) but no exceeding six (6) months; or
3. A fine of more than P20,000.00 but not exceeding P40,000.00.

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than P10,000.00 but not exceeding P20,000.00.

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of nor less than P1,000.00 but not exceeding P10,000.00; and/or
2. Censure;
3. Reprimand;
4. Admonition with warning.

SEC. 12. *Confidentiality of proceedings.* – Proceedings against Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan shall be private and confidential, but a copy of the decision or resolution of the Court shall be attached to the record of the respondent in the Office of the Court Administrator.

These amendments to Rule 140 shall take effect on October 1, 2001 following their publication in two (2) newspapers of general circulation on or before September 15, 2001.”

IV. Summary, Conclusion and Recommendation

Ethics is the living spirit of the profession unfortunately, the subject legal ethics is just given a scant consideration in the law school. The legal training in the law school emphasizes the importance of the bar examination. The legal training is bar oriented so to speak. There is nothing wrong in the bar oriented legal training in the law school but it is the position of this paper that that orientation in the legal education should be pursued hand in hand with developing the hearts of the future votaries of the law. It should be inculcated in the minds and hearts of the votaries of the law as well as in the minds and hearts of the law students that profession without ethics is just the same as the run off the mill activity; that success in the profession is and should always be measured by the

way a lawyer adheres to the ethics of the profession and not on the accumulation of material things.

In teaching law, the law professors should always inject the value of legal ethics regardless of the subjects the law professors are handling. The development of the mind and the heart of future lawyers is a solemn duty of every legal educator worth his salt because the future votaries of the law draw inspiration from their mentors as their role model. The influence of the law professors to their students are indelible because of the respect they repose on their mentors. Law professors are looked with so much awe by their students.

On the part of the selection of judges, an honest to goodness selection process of the men and women who shall sit in the bench should be put in place. We submit that in the selection and in the appointment of judges, emphasis should be had not only on the intellectual and professional competency of the aspirants, the selection process should also “prick” the hearts of the would be judges so as to at least determine the ethical mindset of the future judges, after all the Chinese proverb had this to say “Man made law governs inferior men but moral law governs superior men” and ethics is within the realm of moral law. Poets have often said that the eyes are the windows to the soul; here we say that the heart is the window to the conscience. The absence of administrative charge or case hurled against the aspirant to the bench does not translate to being an ethical one, of course the absence or want of administrative charge or case or the dismissal of or acquittal therefrom is a technical way of saying that the aspirant is a clean slate so to speak, hence, the need to “prick” the hearts of the aspirants to the bench.

“Ad Majorem Dei Gloriam”